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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1934.

NO. 439

WILOIL CORPORATION, Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA.

Appeal From the Supreme Court of Pennsylvania.

PETITION FOR REHEARING.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Wiloil Corporation, by its counsel respectfully petitions your Honorable Court for rehearing of the above case and submits that the Court erred in the following particulars:

I.

Appellant was not concluded by the State Court's finding that the liquid fuels were "sold and delivered" in Pennsylvania because that finding involved the one and only Federal question raised, to wit, interstate commerce, and those words must be read in connection with Section 4 and Section 2 of the taxing act (appellant's brief—appendix pages 31 and 30).

II.

Before the tax accrued under the terms of the taxing act the liquid fuels were required to be in Pennsylvania or, if imported, had "come to rest" in Pennsylvania in the control of the taxpayer, or the original package broken up. The act, Section 2 (appendix 30), paragraphs 2 and 5, clearly defines what transactions "come to rest" under the Act and if there could be any other manner not defined in the Act in which the goods could "come to rest" in a taxing sense, that would not justify the tax because the Act itself has definitely declared what constitutes "come to rest".

Paragraph 6 of said Section 2 will not justify the tax because the taxpayer must "receive *and* distribute liquid fuels in Pennsylvania" and under the finding of the State Court appellant received the goods at Wilmington, Delaware.

III.

The Act, we submit, conclusively shows (Sections 4 and 2, pages 31 and 30 appendix) that there was no attempt or any intention whatsoever by the Act to tax the contract of sale.

IV.

Since under the terms of the Act the goods must be within Pennsylvania or if imported "come to rest" within the definitions of that term declared in the Act, and the Act not taxing the contract of sale itself, there can be no application of the doctrine that commerce is only incidental.

Admitting that the goods were in the constructive possession of appellant while in actual possession of the

carrier, because of the State Court's finding that the title did not pass to the purchaser until the goods arrived at Philadelphia, nevertheless during that constructive possession they were rolling along in interstate commerce, as that commerce was understood and contemplated by the terms of the Act and *eo instante* the car stopped on the private siding of the purchaser the goods "came to rest" for the first time, but, under the law of sales, in the hands of the purchaser, the one and only one taxable under the terms of the Act.

V.

Summarizing the above: Sections 4 and 2 of the taxing act (Appendix—appellant's brief pages 31 and 30) must be read together and when so read it becomes apparent that the Act itself recognized and acknowledged that a transaction the same as involved in this case was one in interstate commerce and clearly excepts such transaction from the tax imposed by the Act.

When the act itself defines an interstate transaction and because of it being such excepts the transaction from the tax, then this Court, we respectfully submit, in affirming the judgment imposing the tax, if our contention be correct, which we feel confident it is, has done so without any taxing act to support its judgment. The State Court gave no construction of the Act by which this Court is bound. It said nothing more than that interstate commerce was not involved because it was incidental, which is a Federal question, and as stated before that doctrine, when read with the Act, has no application.

VI.

The Commonwealth admissions (page 26 appellant's brief) show conclusively, we are convinced, that the appellant was innocent of any attempt to wrongfully escape the tax.

Respectfully submitted,

WILOIL CORPORATION

By J. SMITH CHRISTY,
Counsel.

Counsel hereby certifies that the above petition is presented in good faith and not for delay.

J. SMITH CHRISTY.